

## **REMARKS**

In the December 7, 2009 Office Action, all of the claims stand rejected in view of prior art. No other objections or rejections were made in the Office Action.

### ***Status of Claims and Amendments***

In response to the December 7, 2009 Office Action, Applicants have amended the specification and claims 1, 20 and 23 as indicated above. Claims 2-5 have been subsequently cancelled. Applicants wish to thank the Examiner for the thorough examination of this application. In summary, claims 1, 7-21 and 23-25 are pending, with claims 1 and 20 being the only independent claims. Reexamination and reconsideration of the pending claims are respectfully requested in view of above amendments and the following comments.

### ***Entry of September 9, 2009 Amendment***

In numbered paragraph 1 of the Office Action, it is indicated that Applicant's September 9, 2009 Amendment has been entered into the record.

### ***Rejections - 35 U.S.C. § 103***

In numbered paragraph 6 of the Office Action, claims 1-5, 7, 17-21 and 23-25 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 3,087,003 (Drengler) in view of U.S. Patent No. 3,954,502 (Symons). In numbered paragraph 7 of the Office Action, claims 9-12, 18 and 19 stand rejected as unpatentable over Drengler in combination with Symons and U.S. Patent Application Publication No. 2003/0175588 (Zhang). In response, Applicants have amended independent claims 1 and 20 to include the subject matter of claims 2-5. Thus, claims 2-5 have been cancelled.

More specifically, independent claims 1 and 20 now clearly require that the first active material coating exhibit *a porosity of about 35% to about 45%* after compressing the coated collector at the first pressure, and that the second active material coating exhibiting *a*

*porosity of about 30% to about 40%* after compressing the coated collector at the second pressure. Claims 1 and 20 also now require that *the first pressure be greater than the second pressure such that* the first pressure is from *about 200 to about 600 MPa* and the second pressure is from *about 10 to about 200 MPa*. Clearly this arrangement is *not* disclosed or suggested by the combination of Drengler and Symons.

It is alleged in the Office Action on pages 3 and 4 that Drengler teaches the first and second pressures as claimed, that Symons teaches the above recited porosity ranges, and moreover that such modifications are obvious. Applicants respectfully disagree. First of all, Drengler discloses pressures ranging from 0.5 to 10 tons per square inch (approximately 6.89 to 137.9 MPa) to optimize compression of the active materials, as disclosed in column 2. Contrary to the statement on page 4 of the Office Action, Drengler *clearly does not* teach the range of pressure recited in independent claims 1 and 20 for the first pressure (i.e., about 200 to about 600 MPa). Therefore, a person of ordinary skill would *not* have gathered from Drengler's disclosure any suggestion for such a modification.

Secondly, Symons fails to teach the porosity ranges of the coatings as claimed in amended claims 1 and 20. Column 5 indicates that the porous electrode should have a porosity in the range of 20% to 80%, but preferably from 30% to 60%. This does not suggest a modification such that a *first* active material coating exhibits *a porosity of about 35% to about 45%* and a *second* active material coating exhibits *a porosity of about 30% to about 40%*. Although ranges as a general concept exist by nature, Symons' disclosure of a broad range does *not* suggest two distinct more narrow ranges. I.e., *two specific smaller ranges* are not *obvious* modifications of a *single larger range*. Furthermore, it should be noted that the electrode in Symons does not even have "coatings" as required by the independent claims.

In summary, Applicants respectfully assert that the proposed combination of Drengler and Symons would not lead a person of ordinary skill to meet *all of the limitations* of amended claims 1 and 20. In other words, a person of ordinary skill would not have found it obvious to modify Drengler such that the two pressure ranges and the two porosity ranges would meet the limitations of claims 1 and 20. For these reasons, Applicants respectfully request withdrawal of the rejections in view of the above amendments and comments.

Under U.S. patent law, the mere fact that the prior art can be modified does *not* make the modification obvious, unless an *apparent reason* exists based on evidence in the record or scientific reasoning for one of ordinary skill in the art to make the modification. See, KSR Int'l Co. v. Teleflex Inc., 127 S.Ct. 1727, 1741 (2007). The KSR Court noted that obviousness cannot be proven merely by showing that the elements of a claimed device were known in the prior art; it must be shown that those of ordinary skill in the art would have had some “apparent reason to combine the known elements in the fashion claimed.” Id. at 1741. The current record lacks any apparent reason, suggestion or expectation of success for combining the patents to create Applicants’ unique arrangement of a bipolar cell electrode.

Moreover, Applicants believe that dependent claims 7-19, 21 and 23-25 are also allowable over the prior art of record in that they depend from independent claims 1 and 20, respectively, and therefore are allowable for the reasons stated above. Also, these dependent claims are further allowable because they include additional limitations. Thus, Applicants believe that since the prior art of record does not disclose or suggest the invention as set forth in independent claims 1 and 20, the prior art of record also fails to disclose or suggest the inventions as set forth in the dependent claims.

Therefore, Applicants respectfully request that these rejections be withdrawn in view of the above comments and amendments.

Appl. No. 10/573,861  
Amendment dated March 8, 2010  
Reply to Office Action of December 7, 2009

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In view of the foregoing amendment and comments, Applicants respectfully assert that claims 1, 7-21 and 23-25 are now in condition for allowance. Reexamination and reconsideration of the pending claims are respectfully requested.

Respectfully submitted,

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